

CHAPTER 88, ARTICLE 5

GRAIN WAREHOUSES, AS AMENDED

SEPTEMBER 4, 2005

**88-525. ACT, HOW CITED.** Sections 88-525 to 88-552 and sections 3 and 4 of this act shall be known and may be cited as the Grain Warehouse Act.

Sec. 3. (1) For purposes of the Grain Warehouse Act, whenever any grain is physically deposited into any public warehouse and a scale ticket or warehouse receipt is issued; therefore, such deposit shall be grain in storage. Such deposit does not constitute a sale of the grain, except grain deposited by priced scale ticket or signed contract passing title to the warehouse licensee.

(2) Upon the commission's closure of a warehouse and taking title to grain within the warehouse pursuant to section 88-547, grain contained in a warehouse, including grain owned by the warehouse licensee, is subject to a first priority lien in favor of valid owners, depositors, or storers of grain who are holders of evidence of ownership of grain. The lien created under this section shall be preferred to any lien or security interest in favor of any creditor of the warehouse licensee regardless of the time when the creditor's lien or security interest attached to the grain. Notice of the lien created under this section need not be filed in order to perfect the lien. All the grain in the warehouse, whether stored or not, first shall be applied at all times to the satisfaction of all valid owners, depositors, or storers of grain who hold evidence of ownership of grain.

(3) In the event no distribution is made pursuant to subdivision (1) of section 88-547 and the commission transfers title to the grain back to the warehouse or to another person, then the first priority lien created under this section shall terminate. Nothing in this section shall affect any other rights, including rights of ownership of grain stored at the warehouse, of valid owners, depositors, or storers of grain who are holders of evidence of ownership of grain. Nothing in this section shall prevent the commission from subsequently closing the warehouse and taking other action pursuant to section 88-547.

Sec. 4 Prior to or within ten days after any creditor of the warehouse licensee commences a judicial proceeding to reduce to judgment, foreclose, or otherwise enforce any claim on a creditor's lien or security interest attached to grain contained in the warehouse, the creditor shall serve written notice on the executive director of the commission.

**88-526. TERMS, DEFINED.** As used in the Grain Warehouse Act, unless the context otherwise requires:

(1) Commission means the Public Service Commission;

(2) Direct delivery grain means all grain that is bought, sold, or transported in the name of a warehouse licensee, other than grain that is received at the licensed warehouse facilities;

(3) Direct delivery obligation means the obligation of a warehouse licensee or a grain dealer to transfer title to warehouse-owned grain to a producer by an in-store transfer upon the delivery of direct delivery grain. A direct delivery obligation is treated as a grain dealer obligation until such time as it is satisfied by an in-store transfer;

(4) Grain means wheat, corn, oats, soybeans, barley, rye, flax, or sorghum which has not been processed or packaged for the purpose of distribution as seed, including, but not limited to, edible beans, whole corn plant pellets, alfalfa pellets, millet, sunflower seed, safflower seed, and any other bulk pelleted agricultural storable commodity;

- (5) Grain dealer has the same meaning as in section 75-902;
- (6) Grain in storage means any grain which has been received at any warehouse and to which title has not been transferred to the warehouseman by signed contract or priced scale ticket;
- (7) In-store transfer means a method by which a warehouse licensee transfers title to warehouse-owned grain to any person in satisfaction of a direct delivery obligation between the warehouse licensee or grain dealer and the producer, and the grain remains in the warehouse;
- (8) Post-direct delivery storage position means a storage position acquired through an in-store transfer in satisfaction of a direct delivery obligation;
- (9) Warehouse means any grain elevator, mill, grist mill, building, or receptacle in which grain is held in storage for more than ten consecutive days;
- (10) Warehouse licensee means any warehouseman who is licensed pursuant to the Grain Warehouse Act; and
- (11) Warehouseman means any person, partnership, limited liability company, corporation, or association who (a) receives grain for storage or stores or offers to store grain for legal consideration for another person, partnership, limited liability company, corporation, or association in a warehouse where delivered or (b) receives grain for shipment to other points for storage, consignment, or resale either in or out of this state.

**88-527. WAREHOUSES; WAREHOUSEMAN; LICENSE REQUIRED; INSPECTION; COMMISSION; POWERS AND DUTIES; FEES; AGREEMENTS WITH BORDERING STATES.**

(1) No person shall operate a warehouse nor act as a warehouseman without a license issued pursuant to the Grain Warehouse Act. Warehouses, except warehouses which are licensed under the United States Warehouse Act, shall be licensed and regulated by the commission. If the applicant is an individual, the application shall include the applicant's social security number. Such warehouses shall be inspected by the commission at least once every twelve months.

(2) If the commission determines that additional examinations are necessary after a regular examination is completed at a warehouse, the commission may charge such warehouse for the cost of the additional examinations according to the commission's fee schedule. Warehouses shall only be charged if such examinations are for reasons of irregularities from the previous examination or if financial conditions warrant additional examinations.

(3) The commission may make available to the United States Government or any of its agencies, including the Commodity Credit Corporation, the results of inspections made and inspection reports submitted by employees of the commission upon payment of such fees as may be determined by the commission. The fees shall cover the actual cost of the services rendered in regard to providing the information.

(4) The commission may charge for inspections conducted at the request of a warehouse licensee.

(5) The commission may assess a surveillance fee against the assets of a warehouse licensee for actual expenses incurred by the commission in suspending a license or terminating the operations of a warehouse licensee. The commission may enter into contracts for such purpose and shall keep a record of all surveillance fees collected. All surveillance fees collected by the commission shall be remitted to the state Treasurer for credit to the Nebraska Grain Warehouse Surveillance Cash Fund.

(6) The commission may enter into agreements and contracts with regulators in states which border Nebraska for the purpose of licensing or examining any public grain warehouseman which operates facilities in such states. The commission shall assume all jurisdiction over any warehouseman

headquartered in Nebraska regarding his or her warehouse activity. A warehouseman headquartered and licensed in another state which acquires facilities in Nebraska is under the jurisdiction of the headquarter state under the terms of such agreement or contract.

**88-528. LICENSE; APPLICATION; CRIMINAL BACKGROUND CHECK; FINANCIAL STATEMENT.** Each applicant for a license and each warehouse licensee shall annually file an application with the commission and shall submit to a criminal background check as set forth in section 88-528.01. The application shall be in the form prescribed by the commission to do business under the Grain Warehouse Act and shall include an audited or reviewed fiscal year-end financial statement prepared in accordance with accounting principles generally accepted by a person or firm which holds a permit granted by the Nebraska State Board of Public Accountancy. If the applicant files a reviewed fiscal year-end financial statement, the applicant shall also provide additional security pursuant to section 88-530 in such amount as the commission requires. If licensing as an individual, the financial statement shall be prepared in accordance with Other Comprehensive Basis of Accountancy, as filed with the board, for a personal financial statement, using historical cost and accrual basis of accounting. The financial statement shall include: (1) A balance sheet; (2) a statement of income showing profit or loss; (3) a statement of retained earnings; (4) a statement of changes in the financial position; and (5) the accountant's certifications, assurances, opinions, comments, and notes with regard to such financial statement. An applicant may also submit a valuation of assets by competent appraisal acceptable to the commission for inclusion in computing net worth for the purpose of meeting any net worth requirements imposed by the act or rules and regulations of the commission. If a valuation of assets is submitted, no more than seventy percent of appraised value shall be used in determining compliance with the worth requirements. Such application shall set forth the location of the warehouse to be used by the applicant, its relation to railroad trackage, its capacity, its general plan and equipment, and its ownership.

If an applicant for a license is a wholly owned subsidiary of a parent company and such a financial statement is not prepared for the subsidiary, the parent company shall submit its audited or reviewed fiscal year-end financial statement and shall execute an unconditional guarantee agreement as prescribed by the commission. A parent company may also submit a valuation of assets on behalf of an applicant that is a wholly owned subsidiary of the parent company.

**88-528.01. CRIMINAL HISTORY RECORD INFORMATION CHECK; FINGERPRINTING; WHEN.** For each application filed under section 88-528 after January 1, 2004, one of the following primary parties shall be subject to fingerprinting and a check of his or her criminal history record information maintained by the Federal Bureau of Investigation through the Nebraska State Patrol: (1) If the applicant is not an individual, the chief executive officer, president, or general manager; or (2) if the applicant is an individual, the individual. If the primary party has been subject to a check of his or her criminal history record information pursuant to this section on a prior application, he or she is not subject to another such check upon a subsequent application. If a primary party has been subject to a check of his or her criminal history record information pursuant to another law, the commission may waive such requirements under this section. A primary party shall furnish to the Nebraska State Patrol a full set of fingerprints to enable a criminal background investigation to be conducted. The primary party shall request that

the Nebraska State Patrol submit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The primary party shall pay the actual cost, if any, of the fingerprinting and check of his or her criminal history record information. The primary party shall authorize release of the national criminal history record check to the commission. The criminal history record information check shall be completed within ninety days after the date the application for a license is received in the commission's office, and if not, the application shall be returned to the applicant. The commission shall deny a warehouse license to any applicant whose primary party has been convicted of a felony financial crime.

**88-529. LICENSE FEES.** The commission shall charge an annual license fee for each warehouse to be operated, except as provided in section 88-531. The fee for any license issued for less than twelve months shall be prorated based on its duration. The annual license fee shall be as provided in this section.

<u>Capacity in Bushels</u>		<u>Fee</u>
0 --	10,000 .....	\$ 45
10,001 --	25,000 .....	57
25,001 --	50,000 .....	68
50,001 --	75,000 .....	78
75,001 --	100,000 .....	90
100,001 --	150,000 .....	102
150,001 --	200,000 .....	113
200,001 --	250,000 .....	125
250,001 --	300,000 .....	135
300,001 --	350,000 .....	147
350,001 --	400,000 .....	156
400,001 --	450,000 .....	170
450,001 --	500,000 .....	180
500,001 --	600,000 .....	192
600,001 --	700,000 .....	203
700,001 --	800,000 .....	215
800,001 --	900,000 .....	225
900,001 --	1,000,000 .....	237
1,000,001 --	2,000,000 .....	338
2,000,001 --	3,000,000 .....	395
3,000,001 --	4,000,000 .....	450
4,000,001 --	5,000,000 .....	507
5,000,001 --	6,000,000 .....	563
6,000,001 --	7,000,000 .....	620
7,000,001 --	8,000,000 .....	675
8,000,001 --	9,000,000 .....	732
9,000,001 --	10,000,000 .....	788
10,000,001 --	11,000,000 .....	845
11,000,001 --	15,000,000 .....	1,070
15,000,001 --	20,000,000 .....	1,350
20,000,001 --	25,000,000 .....	1,632
25,000,001 --	30,000,000 .....	1,913
30,000,001 --	40,000,000 .....	2,475
40,000,001 or more	.....	3,375

**88-530. FINANCIAL REQUIREMENTS; SECURITY; REQUIREMENTS; LIABILITY OF SURETY.** Each applicant shall show sufficient net worth or stockholders' equity to conform with the financial requirements which the commission shall establish by the adoption and promulgation of rules and regulations. Applicants shall

file with the commission security in the form of a bond, a certificate of deposit, an irrevocable letter of credit, United States bonds or treasury notes, or other public debt obligations of the United States which are unconditionally guaranteed as to both principal and interest by the United States in such sum as the commission may require and in the form and of the kind prescribed by the commission. The security shall be in an amount set by the commission pursuant to rules and regulations, but shall not be less than twenty-five thousand dollars. The security shall run to the State of Nebraska for the benefit of each person who stores grain in such warehouse and of each person who holds a check for purchase of grain stored in such warehouse which was issued by the warehouse licensee not more than five business days prior to the cutoff date of operation of the warehouse, which shall be the date the commission officially closes the warehouse. The security shall be conditioned upon (1) the warehouse licensee carrying combustion, fire, lightning, and tornado insurance sufficient to cover loss upon all stored grain in such warehouse, (2) the delivery of the grain upon surrender of the warehouse receipt, and (3) the faithful performance by the warehouse licensee of all provisions of law relating to the storage of grain by such warehouse licensee and rules and regulations adopted and promulgated by the commission. The commission may require increases in the amount of the security from time to time as it may deem necessary for the protection of the storers. For an applicant who has filed a reviewed fiscal year-end financial statement pursuant to section 88-528, the commission shall require additional security in an amount set by the commission pursuant to rules and regulations, which shall not be less than twenty-five thousand dollars and not more than five hundred thousand dollars. The surety on a bond shall be a surety company licensed by the Department of Insurance. An irrevocable letter of credit or certificate of deposit shall be issued by a federally insured depository institution.

The security shall particularly describe the warehouse intended to be covered by the security. The liability of the surety on a bond shall not accumulate for each successive license period which the bond covers. The liability of the surety shall be limited to the amount stated on the bond or on an appropriate rider or endorsement to the bond.

**88-530.01. COMMISSION; ADDITIONAL FINANCIAL DOCUMENTS REQUIRED; WHEN.** In addition to the reviewed fiscal year-end financial statement required by section 88-528 and to detect noncompliance with financial requirements established by the commission pursuant to section 88-530, the commission shall, for good cause shown as determined by criteria set forth in commission rules and regulations, require (1) a verified report of the total grain inventory or (2) an audited financial statement. A verified report of grain inventory or audited financial statement shall be prepared in accordance with accounting principles generally accepted by a person or firm which holds a permit granted by the Nebraska State Board of Public Accountancy.

**88-531. LICENSE; MULTIPLE WAREHOUSES; LICENSE FEE; HOW COMPUTED.** Only one license may be required for the operation of all warehouses operated by one warehouse licensee if:

- (1) Only one set of books is kept for the warehouses;
- (2) Cost slips, scale tickets, warehouse receipts, and checks are issued in one series for grain received or stored in such warehouses; and
- (3) The warehouses are operated in conjunction with each other.

If the commission finds that enforcement of the Grain Warehouse Act or the interests of the storers requires that warehouses operated by the same licensee at separate locations be licensed separately, it may require separ-

ate licenses for such facilities pursuant to rules and regulations adopted and promulgated by the commission.

The license fee and security required of such warehouse licensee shall be computed on the basis of the separate capacities of each warehouse.

**88-532. LICENSE; ISSUANCE; EXPIRATION; RENEWAL; POSTING REQUIREMENTS.** Upon payment of the license fee and approval by the commission of the application and the bond, certificate of deposit, irrevocable letter of credit, or other security described in section 88-530, the license shall be issued. A new or renewed license shall expire twelve calendar months after the effective date of the issuance or renewal of such license. A license may be kept in continuous force and effect if the warehouse licensee files a proper application for renewal and security which the commission can approve prior to the date of termination.

Notice of the security in the form prescribed by the commission shall be posted in a conspicuous place in each warehouse showing the amount of security on the stored grain. Each warehouse licensee shall also post in a conspicuous place in each warehouse office the storage fees and receiving and load-out fees charged for each type of grain stored.

**88-533. INCREASE IN STORAGE CAPACITY; REQUIREMENTS; FEES.** No warehouse licensee shall increase storage capacity without first obtaining the approval of the commission and effecting such revisions in its security as may be required by the commission. Additional fees may be imposed for increases in storage capacity or for any other changes in the license in such reasonable amounts as may be prescribed by the commission.

**88-534. PAYMENT FOR GRAIN; WHEN.** Payment to the seller for grain purchased by a warehouse licensee shall be made upon demand by the seller except as otherwise provided by written or oral contract between the parties.

**88-535. SCALE TICKET; ISSUANCE; PRIMA FACIE EVIDENCE.** Each warehouse licensee shall, at the time of the delivery of grain to or the shipment of grain from a warehouse, issue a lawful scale ticket to the owner or consignee of such grain, except when the delivery or shipment is by rail or water. The scale tickets shall contain all information prescribed by the commission. A scale ticket issued by a warehouse licensee shall be prima facie evidence of the holder's claim of title to the goods described in such ticket.

**88-536. RECEIPTS; ISSUANCE; REQUIREMENTS; COMMISSION; POWERS AND DUTIES; REGISTRATION.**

(1) Within fifteen days after demand by the owner or deliverer of any grain to a warehouse for storage, the warehouse licensee shall issue a lawful negotiable or nonnegotiable receipt to such owner or deliverer of such grain. The receipt shall state the date of delivery, the name of the owner, and the grade, gross weight, dockage, and net weight of the grain represented in the receipt.

(2)(a) The commission shall prepare forms for such receipts and may adopt procedures for the electronic issuance of such receipts. All warehouse licensees shall either use forms prepared by the commission for such receipts or follow procedures adopted by the commission for electronic issuance of such receipts. Warehouse licensees that use forms prepared by the commission shall register such receipts with the commission.

(b) The commission shall fix charges to be assessed and collected for such warehouse receipt forms not to exceed the cost of printing, delivering, and handling. Payment of such charges shall be made in advance

of delivery of such receipt forms and shall entitle each such receipt to registration without any further charge or fee. The commission may make refunds of such charges for such unused receipt forms as may be returned to the commission.

(c) All procedures for electronic filing of receipts adopted by the commission shall comply with section 86-611. The commission may adopt authentication procedures to verify receipts issued electronically. Compliance with the authentication procedures adopted by the commission shall have the same validity as a signature on any receipt.

(3) Any warehouse licensee may issue a receipt to himself or herself as the owner of grain stored in his or her own warehouse, which receipt shall be registered with the commission. Upon receiving any such grain warehouse receipt for registration and being satisfied that the provisions of the Grain Warehouse Act and any rules and regulations adopted and promulgated pursuant to the act have been complied with, the commission shall cause such receipt to be registered.

**88-537. DUPLICATE RECEIPT; ISSUANCE; REQUIREMENTS; LIABILITY.** When a negotiable warehouse receipt has been lost or destroyed, the commission may approve the delivery of the grain or the issuance of a duplicate receipt upon satisfactory proof of such loss or destruction if the party who requests it furnishes a bond with corporate or personal surety, to be approved by the commission, conditioned to indemnify the warehouse licensee or any holder or other person entitled to the grain against all loss, liability, or expense which may be sustained by reason of such delivery. The delivery of the grain or the issuance of a duplicate receipt pursuant to the approval of the commission shall not relieve the warehouse licensee from liability to a person to whom the negotiable receipt has been or will be negotiated for value without notice of the proceedings before the commission or of the delivery of the grain or the issuance of the duplicate receipt pursuant to such proceedings.

**88-538. DUPLICATE RECEIPT; ISSUANCE; EFFECT.** A duplicate receipt shall not be issued by any warehouse licensee without prior approval by the commission. A receipt so issued, upon the face of which the word duplicate is plainly placed, shall be a representation and warranty by the warehouse licensee that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issuance of the duplicate.

**88-539. SUPERVISOR OF WAREHOUSES; APPOINTMENT; POWERS AND DUTIES.** For the proper enforcement of the Grain Warehouse Act, the commission shall designate and appoint a person experienced in the handling of grain as supervisor of warehouses. The supervisor may perform all duties required of the commission pursuant to the Grain Warehouse Act subject to the approval of the commission.

**88-540. DELIVERY OF GRAIN; DAMAGES; SURRENDER RECEIPT.** Upon demand, presentation of receipts, and payment of lawful charges, the grain represented by such receipts or any part of such grain shall be immediately delivered to the owner or his or her order, and the part delivered shall not be subject to any further charge for storage after such demand for delivery has been made and facilities for receiving and shipping the grain have been provided. If demand is made for only a part of the grain represented by any receipt, the amount delivered shall be entered in a proper blank upon the face of such receipt and delivery of such grain acknowledged on the receipt by the person holding such receipt. For any grain not delivered within twenty-four hours after such demand, the warehouse licensee shall be liable, upon his, her, or

its security, to the owner in damages not exceeding one cent per bushel for each day's delay unless he, she, or it delivers to different owners in the order demanded as rapidly as can be done by ordinary diligence. If terminal delivery of grain is demanded, the warehouse licensee shall issue and deliver to the owner or his or her order a surrender receipt, which shall conform to the receipt issued for the grain under section 88-536, making such grain deliverable in its net amount at any terminal market or transit point designated by the owner of such receipt. Such grain shall be subject to the usual freight, weighing, and switching charges when it arrives at the terminal so designated, and the freight shall be computed on the basis of the gross weight of the grain represented by such surrender receipt. The owner of the receipt may, at his, her, or its option, order the car in which the grain covered by the surrender receipt is to be transported, in which case the grain shall be delivered when the car so ordered is placed at the warehouse.

**88-541. STORAGE RATES.** Not less than once each year, the commission shall by order fix reasonable storage rates, and no warehouse licensee shall charge a lesser or greater rate, except upon application to and a hearing before the commission. If, after a hearing, the commission finds that a lesser or greater rate should be ordered, it shall enter a supplemental order fixing a different rate for such applicant. Such charges shall be full compensation for the receiving, handling, storing, delivering, and insuring of grain. No discrimination shall be made between different customers by any state-licensed grain warehouse either in facilities, charges, or handling of any grain, except that members of a cooperative may be given preference in storage facilities in warehouses of the cooperative. The rates charged to any governmental agency shall be exempt from commission regulation.

**88-542. INSPECTIONS AUTHORIZED.** The property, books, records, accounts, papers, and proceedings of every warehouse shall, at all times during business hours, be subject to inspection by the commission.

**88-543. PROHIBITED ACTS; PENALTY.** (1) No warehouse licensee or partner, limited liability company member, officer, or agent thereof shall:

(a) Issue a receipt for grain not actually received. If at any time there is less grain in a warehouse than outstanding receipts issued for grain, there shall be a presumption that the warehouse licensee or partner, limited liability company member, officer, or agent thereof has wrongfully removed grain, has wrongfully caused grain to be removed, or has issued receipts for grain not actually received, and has violated this section.

(b) Create a post-direct delivery storage position without issuing proper documentation consistent with rules and regulations adopted and promulgated by the commission;

(c) Create a post-direct delivery storage position at any time the warehouse licensee does not have sufficient warehouse-owned grain or grain in open storage to cover the storage position created for the benefit of the producer; or

(d) Record grain as being received or loaded out that has not been physically deposited in or physically removed from the warehouse.

(2) Any warehouse licensee or partner, limited liability company member, officer, or agent thereof who knowingly and willingly violates this section shall be guilty of a Class IV felony.

**88-543.01. CIVIL PENALTY.** The commission may assess a civil penalty, pursuant to section 75-156, against any person who violates the Grain Warehouse Act.



**88-544. STORAGE; TERMINATION.** At the election of the warehouse licensee and under rules and regulations adopted and promulgated by the commission, storage in a warehouse operated by such licensee may be terminated on application to the commission and upon good cause shown according to the rules and regulations of the commission. Subject to such rules and regulations as the commission may adopt and promulgate, any storage contract on any or all such grain may be terminated by the owner at any time by the payment or tender of all legal charges and the surrender of the warehouse receipt, together with a demand for delivery of such grain or notice to sell the same.

**88-545. COMMISSION; ENFORCE ACT; RULES AND REGULATIONS; VIOLATION; PENALTY; DAMAGES; PROSECUTION.** The commission shall enforce the Grain Warehouse Act and shall adopt and promulgate rules and regulations to aid in the administration of the act. Any person or partner, limited liability company member, officer, or agent of any person who violates the Grain Warehouse Act shall be guilty of a Class IV felony, unless otherwise specifically provided, and shall be liable for any damages suffered by any person from such violation. Upon request of the commission, the Attorney General or any county attorney shall assist in the prosecution of any violations of the act.

**88-545.01. COMMISSION; CONTRACTS FOR AUDIT OR EXAMINATION WORK AUTHORIZED; GRAIN WAREHOUSE AUDITING FUND; CREATED; USE; INVESTMENT.**

(1) The commission may enter into contracts with public or private entities which provide a benefit for both parties for purposes of performing audit or examination work. The commission shall conduct the work as time permits and shall not allow the work to conflict with the commission's primary responsibility of performing grain warehouse examinations within the prescribed statutory time.

(2) Fees from audit or examination contracts shall be remitted by the commission to the State Treasurer for credit to the Grain Warehouse Auditing Fund which is created. The fund shall be available to the commission to buy material and equipment for performing audits and examinations or to offset the cost of performing audits and examinations. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

**88-546. LICENSE; SUSPENSION OR REVOCATION; PROCEDURE.** The commission may, upon complaint filed by it or any person and after a hearing, suspend or revoke the license of any warehouse licensee for failure to comply with the requirements of the Grain Warehouse Act or any rule or regulation adopted and promulgated pursuant to such act. The complaint shall state the grounds for suspension or revocation and shall be filed with the commission pursuant to the commission's rules of procedure. The commission shall serve the warehouse licensee with a copy of the complaint and a copy of the order of the commission stating the time for hearing, which time shall be at least twenty days from the date of service. If the commission determines that the public good requires it, the commission may, upon the filing of a complaint and without hearing, temporarily suspend a license pending the determination of the complaint.

**88-547. WAREHOUSE; CLOSURE; WHEN; COMMISSION; POWERS.** If the commission determines that a shortage of grain exists or that the quality of grain in storage is insufficient to meet the obligations at a warehouse, if a license expires and is not renewed, if a license is surrendered to or canceled or revoked by the commission for violation of any statute or rule or regulation

adopted and promulgated by the commission, or if a warehouse is operated without a license, the commission may close the warehouse and do one or more of the following:

(1) Take title to all grain stored in the warehouse at that time in trust for distribution on a pro rata basis to all valid owners, depositors, or storers of grain who are holders of evidence of ownership of grain. No claim of the licensee for grain stored shall be honored until the claims of all other owners, depositors, and storers have been paid in full. Such distribution may be made in grain or in proceeds from the sale of grain. If the commission closes the warehouse and takes title to the grain, such action shall operate as a stay of the commencement or continuation, including the issuance or employment of process, of any judicial, administrative, or other action or proceeding to take title to the grain that was or could have been commenced before such action by the commission;

(2) After notice and hearing (a) determine the value of the shortage and the pro rata loss to each owner, depositor, or storer of grain, (b) require all or part of the warehouse security to be forfeited to the commission, and (c) distribute the security proceeds on such pro rata basis; or

(3) Commence a suit in district court for the benefit of owners, depositors, or storers of grain.

The commission may deposit the proceeds from the security forfeiture under subdivision (2) of this section or the sale of grain under subdivision (1) of this section in an interest-bearing trust account for the benefit of the valid owners, depositors, or storers of grain pending final determination of the valid owners, depositors, or storers and distribution of such proceeds.

**88-548. FEDERAL LICENSEE; EXEMPTION FROM ACT; DUTIES; COMMISSION; GRAIN PROBE; DUTIES; VIOLATION; PENALTY.**

(1) Any grain dealer, person, firm, corporation, or association in this state licensed under the United States Warehouse Act shall be exempt from the Grain Warehouse Act, except that each licensee under the United States Warehouse Act shall (a) annually notify the commission in writing of such license and shall notify the commission at once in writing if the license is terminated, canceled, or suspended and (b) post notification of such licensee's bond under the United States Warehouse Act in a conspicuous place of business listing the total amount of bond on the stored grain.

(2) No warehouse licensee, licensee under the United States Warehouse Act, or grain dealer licensed pursuant to section 75-903 shall use end-intake air probes which use a vacuum to collect a sample from a load of grain to determine foreign material content. The commission shall adopt and promulgate rules and regulations regarding approval of grain probes. Any person who violates this subsection shall be guilty of a Class I misdemeanor.

**88-549. WAREHOUSE; NOTICE TO PERSON STORING GRAIN; VIOLATION; PENALTY.** At least once each calendar year and not later than one year from the date of receipt of the previous written notice, each warehouse licensee shall send written notice to each person who stores grain in such warehouse at such person's last-known address specifying the type and amount of grain in storage, the location at which the grain is being stored, and the current rate of storage. Any warehouse licensee who violates this section shall be guilty of a Class V misdemeanor.

**88-550. GRAIN DUST INSPECTIONS; DEPARTMENT OF ENVIRONMENTAL QUALITY; COMMISSION; DUTIES.** The Department of Environmental Quality and the commission shall, during the course of their regular inspections required by

law, inspect warehouses for conditions which are or may be conducive to grain dust explosions. Such conditions shall include, but not be limited to, the presence at the warehouse of excessive grain dust, faulty equipment, or any other condition which could reasonably lead to an explosion if not corrected. The department and commission shall report any such condition to the State Fire Marshal as soon as practicable after each inspection.

**88-551. FEES; WHERE CREDITED.** Except as provided in sections 88-527, 88-545.01, and 88-552, all fees collected pursuant to the Grain Warehouse Act shall be paid to the State Treasurer and credited to the General Fund.

**88-552. NEBRASKA GRAIN WAREHOUSE SURVEILLANCE CASH FUND; CREATED; USE; INVESTMENT.** There is hereby created in the state treasury a fund to be known as the Nebraska Grain Warehouse Surveillance Cash Fund. Such fund shall be used solely for disbursing funds and receiving reimbursement for services performed by the commission in the suspension or termination of a warehouse operation. All money received by the commission for such services shall be remitted to the State Treasurer for credit to such fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.